

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

A. M. SHOOK, Trustee of the FARMERS DAIRY  
ASSOCIATION, a Corporation, Bankrupt,  
Appellant,  
vs.  
A. LEVI,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Southern District of California,  
Southern Division.

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Filed  
JAN 18 1917  
F. D. Monckton,



No. 2868

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States for the  
Southern District of California, Southern  
Division.*

IN BANKRUPTCY—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIA-  
TION, a Corporation, Bankrupt.

**Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States to A. Levi, Greet-  
ings:

You are hereby cited and admonished to appear in  
the United States Circuit Court of Appeals for the  
Ninth Circuit, in the city of San Francisco, State of  
California, on the 30th day of September, A. D.  
1916, pursuant to the appeal duly obtained and filed  
in the clerk's office of the District Court of the  
United States for the Southern District of Califor-  
nia, wherein you as objecting creditor are appellee,  
and A. M. Shook, Esq., Trustee of the Farmers  
Dairy Association, a Corporation, Bankrupt, is the  
appellant, to show cause if any there be, why the  
order and decree in said appeal mentioned should  
not be reversed and corrected, and why speedy jus-  
tice should not be done to the parties in that behalf,  
and to do and receive that may appertain to justice  
to be done in the premises.

WITNESS the Honorable BENJAMIN F.  
BLEDSOE, United States Judge for the Southern  
District of California, on the 1st day of September,

in the year of our Lord, one thousand nine hundred and sixteen.

BLEDSON,

United States Judge for the Southern District of  
Calif. [3\*]

State of California,  
County of San Diego,—ss.

G. W. Cobb, being duly sworn, deposes and says: That he is and was at the time of the service of the paper herein referred to a citizen of the United States, over the age of eighteen years, and not a party to the within entitled action; that he personally served the within Citation on Appeal, on the hereinafter named objecting creditor, and appellee, by delivering to and leaving with him personally, in the county of San Diego, State of California, at the time set opposite his name, a copy of said Citation on Appeal.

Name of party served: A. LEVI.

Time of service. Sept. 2, 1916. 10:45 A. M.

Fee for service \$1.00.

Total: \$1.00.

G. W. COBB.

Subscribed and sworn to before me this September 2, 1916.

[Seal]

A. B. BOWMAN,

Notary Public in and for the County of San Diego,  
State of California. [4]

Copy of Within Citation on Appeal received and service accepted September 2, 1916.

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\*Page-number appearing at foot of page of original certified Transcript of Record.



[Endorsed]: 2155—Bkcy. In the District Court of the United States for the Southern District of California, Southern Division. In Bankruptcy—No. 2155. In the Matter of Farmers Dairy Association, a Corporation, Bankrupt. Citation on Appeal. Filed Sept. 2, 1916, at — min. past 9 o'clock, A. M. Wm. M. Van Dyke, Clerk. Leslie S. Colyer, Deputy.

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**Names and Addresses of Attorneys.**

For A. M. SHOOK, Trustee of the Farmers Dairy Association, a Corporation, Bankrupt.

A. L. WISSBURG, Esq., Union Building, San Diego, California.

For ADOLPH LEVI:

JAMES E. O'KEEFE, Esq., San Diego, California. [5]

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*In the District Court of the United States of America in and for the Southern District of California, Southern Division.*

IN BANKRUPTCY—NO. 2155.

In the Matter of the FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt. [6]

*In the District Court of the United States in the Southern District of California, Southern Division.*

IN BANKRUPTCY—NO. 2155.

In the Matter of FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

### Petition in Reclamation.

Now comes Adolph Levi and respectfully represents to said Court as follows:

That your petitioner is a resident of the city of San Diego, State of California, and has been such for a number of years last past.

That said Farmers Dairy Association is a corporation, organized and existing under the laws of the State of California, with its principal place of business in the city of San Diego, said State, and for a year or more previous to the 22d day of July, A. D. 1915 was engaged in the sale of milk and its by-products, both wholesale and retail.

And on the 28th day of July, A. D. 1915, an involuntary petition in bankruptcy was filed in said court by certain of the creditors of said corporation. That on the 18th day of August, A. D. 1915, said Farmers Dairy Association, a corporation, was duly adjudicated bankrupt by said Court. That on the 7th day of September, A. D. 1915, the first meeting of the creditors was held in said proceeding.

And on said last mentioned date A. M. Shook was duly appointed trustee of said bankrupt and that said A. M. Shook is now the duly appointed, qualified and acting trustee of said Farmers Dairy Association, a corporation, bankrupt. [7]

That heretofore in the said city of San Diego and between the 6th day of July, A. D. 1914 and the 2d day of February, A. D. 1915, your petitioner, under a lease contract of sale, sold to said Bankrupt certain

personal property, to wit: Nine (9) horses, described as follows:

One Bay Mare, known as the Errica Mare, at the agreed price of —.

1 Bay horse, known as the Errica horse, at an agreed price of —.

1 Bay horse, known as the Mohnika horse, at an agreed price of —.

1 Bay horse, known as the Reinbach horse, at an agreed price of —.

1 Bay Mare, known as the Reinbach mare, at an agreed price of —.

2 Bay Mares, known as the Danere mares, at an agreed price of —.

1 Roan Mare, known as the Danere mare, at an agreed price of —.

1 Bay Mare, known as the Ballantyne mare, at an agreed price of —.

The total purchase price of said horses was to be the sum of \$1035.00,

That all of said personal property was delivered to said bankrupt and that the same is now in the possession of said trustee. That under and by the terms of the provisions of the contract, agreeing to sell said horses to said Farmers Dairy Association, it was mutually understood and agreed between your petitioner and said Farmers Dairy Association that the title and ownership of said horses should remain in said petitioner until the total purchase price therefore was paid, to wit, \$1035. That there has been paid on said purchase price the sum of \$295 and that the balance remaining unpaid is the sum of \$740.

That at the time of the agreement to sell said horses to said Farmers Dairy Association to evidence said indebtedness, notes, showing their indebtedness thereon, being hereto attached and are made a part of this petition. That said notes were not received in payment of the purchase price of said personal property, but were received only to [8] evidence said indebtedness, and it was mutually understood between the parties to said agreement that on the payment of said notes in the manner and at the time as provided therein your petitioner would sell to said association said horses and would deliver his Bill of Sale therefore, and that title to said property should at all times remain in said seller until said notes were paid.

That your petitioner is informed and believes that said trustee claims title and the right to possession to said property, asserting that the said Association is the owner thereof and for no other reason.

That petitioner also alleges that said trustee has in his possession four horses, the property of said petitioner, which horses are described as follows:

2 Gray horses and 2 Bay horses.

That said last four mentioned horses were rented and hired to said bankrupt on or about June 24th., A. D. 1915. That said horses are the property of your petitioner and that said bankrupt has no interest or ownership in or to said horses whatsoever. That before the filing of this petition, to wit, September 7th, A. D. 1915, your petitioner demanded of said trustee the return of said four horses, but that said trustee has refused, and still refuses, to return the

same, and your petitioner is informed and believes that said trustee claims the right to possession of said horses, asserting that said Farmer Dairy Association, a corporation, bankrupt, is the owner of said property.

WHEREFORE, your petitioner prays that said trustee be directed by this Court to forthwith deliver said nine head of horses to your petitioner, and that said trustee also be directed to deliver to your petitioner said four head of [9] horses described herein and for such other and further relief as may be just and proper in the premises.

Dated at San Diego, California, in said district this day of September, A. D. 1915.

ADOLPH LEVI,  
Petitioner.

State of California,  
County of San Diego,—ss.

On this 10th day of September, A. D. 1915, before me, came Adolph Levi, of the city of San Diego, California, said district, and made oath and said: That he has read the foregoing petition, consisting of three sheets of paper, and knows the contents thereof and that the statements and allegations made therein are true.

ADOLPH LEVI,  
Petitioner.

Subscribed and sworn to before me at San Diego, Cal. in said district, this day of September, A. D. 1915.

[Seal]

JAMES E. O'KEEFE,  
Notary Public. [10]

\$65.00 San Diego, California, July 6th, 1914.

One (1) year after date, without grace, for value received, we or either of us promise to pay to the order of Adolph Levi at San Diego, California, sixty-five and no/100 dollars, with interest at the rate of eight per cent per annum from date until paid, interest payable quarterly and if not so paid to be compounded quarterly and bear the same rate of interest as the principal; and should the interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in Gold Coin of the United States. Should suit be commenced, or an attorney employed to enforce the payment of this note, we agree to pay an additional sum of ten per cent on principal and accrued interest, as attorney's fees in such suit.

Balance in full due on one (1) bay horse and one (1) bay mare.

FARMERS DAIRY ASS'N.

N. J. PEAVEY,

Pres.

GEO. M. KIMBALL,

Sec.

[Endorsed]: Oct. 10, 1914, Pd. Int. to /6/14-1.30  
Jan 23, 1915, Pd. Int. to 1/6/15-1.30. Apr 23, 1915,  
Pd. Int. to 4/6/15-1.30. Filed this 14th day of Sept.,  
1915, at 45 minutes past 2 P. M. Edward T. Lannon,  
Referee in Bankruptcy.

\$75.00 San Diego, California, Feb. 2, 1915.

One year after date, without grace, for value received, Farmers Dairy Ass'n. promise to pay to the

order of Adolph Levi at San Diego, Calif., seventy-five dollars with interest at the rate of 8 per cent per annum from date until paid, interest payable quarterly and if not so paid to be compounded as principal and bear the same rate of interest as the principal and should the interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder [11] of this note. Principal and interest payable in Gold Coin of the United States. Should suit be commenced, or an attorney employed to enforce the payment of this note, we agree to pay an additional sum of 10 per cent on principal and accrued interest as attorney's fees in such suit.

[Documentary Stamp.]

FARMERS DAIRY ASSOCIATION.

[Seal]

By N. J. PEAVEY,

Pres.

By H. STEPHENSON,

Secty.

[Endorsed]: Filed this 14th day of Sept. 1915, at 45 minutes past 2 P. M. Edward T. Lannon, Referee in Bankruptcy.

\$50.00 San Diego, California, August 17th, 1914.

One (1) year after date, without grace, for value received, we promise to pay to the order of Adolph Levi at San Diego, California, Fifty and no/100 Dollars with interest at the rate of eight per cent per annum, from date until paid, interest payable quarterly and if not so paid to be compounded quarterly and bear the same rate of interest as the principal, and should the interest not be paid when due, then

the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States. Should suit be commenced, or an attorney employed to enforce the payment of this note, we agree to pay an additional sum of ten per cent on principal and accrued interest, as attorney's fees in such suit.

Balance in full for one bay mare and one bay horse, known as the Erreca mare and horse.

FARMERS DAIRY ASS'N

[Seal]

By N. J. PEAVEY,

Pres.

L. A. SERRANO,

Sect. [12]

[Endorsed]: Dec. 11 1914. Pd. I. 11/17/14—1.00. Filed this 14th day of Sept., 1915, at 45 Minutes past 2 P. M. Edward T. Lannon, Referee in Bankruptcy.

\$50.00. San Diego, California, August 17, 1914.

Nine (9) months after date, without grace, for value received, we promise to pay to the order of Adolph Levi at San Diego, California, fifty and no/100 dollars with interest at the rate of eight per cent per annum from date until paid, interest payable quarterly and if not so paid to be compounded quarterly and bear the same rate of interest as the principal; and should the interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and



interest payable in gold coin of the United States. Should suit be commenced, or an attorney employed to enforce the payment of this note, we agree to pay an additional sum of ten per cent on principal and accrued interest, as attorney's fees in such suit.

FARMERS DAIRY ASSN.

N. J. PEAVEY,

Pres.

[Seal]

L. A. SERRANO JR.,

Sect.

[Endorsed]: Dec. 11, 1914. Pd. Int. to 11/17/14—1.00. Filed this 14th day of Sept. 1915, at 45 minutes past 2 P. M. Edward T. Lannon, Referee in Bankruptcy.

\$375.00. San Diego, California, January 2d, 1915.

On or before one year after date, without grace, for value received, we promise to pay to the order of Adolph Levi at San Diego, California, three hundred seventy-five & no/100 dollars, with interest at the rate of 8 per cent per annum from date until paid, interest payable quarterly, and if not so paid to be compounded and bear the same rate of interest as the principal, and should the interest not be paid when due then the whole sum of principal and interest shall become immediately [13] due and payable at the option of the holder of this note. Principal and interest are payable in gold coin of the United States. Should suit be commenced, or an attorney employed to enforce the payment of this note, we agree to pay an additional sum of 10 per

cent on principal and accrued interest as attorney's fees in such suit.

FARMERS DAIRY ASSOCIATION.

By N. J. PEAVEY,

Prest.

[Seal]

By H. STEPHENSON,

Secty.

[Endorsed]: (4 Documentary Stamps.) Apr. 23, 1915. Pd. Int. to 4/2/15—7.50. Filed this 14th day of Sept., 1915, at 45 minutes past 2 P. M. Edward T. Lannon, Referee in Bankruptcy.

\$125/00 San Diego, California, Dec. 1st, 1914.

On or before six months after date, without grace, for value received, we promise to pay to the order of Adolph Levi at San Diego, Cal., one hundred and twenty-five dollars with interest at the rate of eight per cent per annum from date until paid, interest payable quarterly and if not so paid to be compounded as principal and bear the same rate of interest as the principal, and should the interest not be paid at maturity then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States. Should suit be commenced or an attorney employed to enforce the payment of this note, we agree to pay an additional sum of 10 per cent on principal and ac-

crued interest, as attorney's fees in such suit.

FARMERS DAIRY ASSOCIATION.

By N. J. PEAVEY,

Prest.

[Seal]

By H. STEPHENSON,

Secty. [14]

[Endorsed]: (2 Documentary Stamps.) April 9, 1915. Pd. Int. to 3/1/15—2.50. Filed this 14th day of Sept., 1915, at 45 minutes past 2 P. M. Edward T. Lannon, Referee in Bankruptcy.

[Endorsed]: 2155—Bankruptcy. In the District Court of the United States for the Southern District of California, Southern Division. In the Matter of Farmers Dairy Association, a Corporation, Bankrupt. Petition in Reclamation. Filed this 12th day of Sept. 1915, at 45 minutes past 2 P. M. Edward T. Lannon, Referee in Bankruptcy. James E. O'Keefe, Attorney for Petitioner, McNeece Building, San Diego, Cal. [15]

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*In the District Court of the United States for the Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

**Answer of A. M. Shook, Esq., Trustee, to Petition of Adolph Levi.**

Comes now A. M. Shook, Esq., the duly elected, qualified and acting trustee of the estate of the above-

named bankrupt, and answers the petition of Adolph Levi, filed herein, as follows:

Said trustee denies that in the city of San Diego and between the 6th day of July, A. D. 1914, and the 2d day of February, 1915, the petitioner, Adolph Levi, sold the property mentioned and described in said petition of reclamation, filed herein, to the bankrupt, under a lease contract of sale. Upon information and belief, admits that the said property mentioned and described in said petition was delivered to said bankrupt by petitioner; denies that under and by the terms of the provisions of the contract that it was agreed between petitioner and the bankrupt that title and owner of said property mentioned and described in said petition was to be and remain in petitioner. That the Trustee herein is informed, and believes, and upon such information and belief alleges that said petitioner sold the property mentioned and described in said petition [16] to the bankrupt herein, outright, in payment of which the bankrupt gave certain promissory notes, which petitioner accepted in full payment of said debt. The Trustee admits that there is a certain amount due petitioner on said notes, but denies that title to said property should at all times remain in the seller until the notes are paid.

Wherefore, this trustee prays that the said petition be denied.

A. M. SHOOK,

Trustee of the Estate of Farmers Dairy Association,  
a Corporation, Bankrupt.

A. L. WISSBURG,

Attorney for Trustee.

Southern District of California,  
County of San Diego,—ss.

A. M. Shook, being duly sworn, deposes and says that he is the person named as Trustee in the foregoing answer; that he knows the contents of same, and that same is true, except as to the matters herein stated on information and belief, and as to those matters he believes it to be true.

A. M. SHOOK.

Sworn to and subscribed before me this 13th day of September, A. D. 1915.

[Seal] H. R. VON BLOEKER,  
Notary Public in and for the County of San Diego,  
State of California. [17]

[Endorsed]: In the District Court of the United States for the Southern District of California Southern Division. In the Matter of Farmers Dairy Association, a Corporation, Bankrupt. Answer of A. M. Shook, Trustee to Petition of Adolph Levi. A. L. Wissburg, Attorney for Trustee. Filed this 13th day of Sept., 1915, at 15 minutes past 4 P. M. Edward T. Lannon, Referee in Bankruptcy. [18]

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*In the District Court of the United States for the  
Southern District of California, Southern Dis-  
trict.*

IN BANKRUPTCY—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIA-  
TION (a Corp.), Bankrupt.

**Petition for Review.**

To Edward T. Lannon, Esq., Referee in Bankruptcy:

Your petitioner respectfully shows:

That heretofore, on the — day of September, 1915, he filed in said proceedings his petition in reclamation wherein he claims to be the owner of and entitled to the possession of nine (9) certain head of horses that said petition was heard and on the 27th day of September, 1915, an order, a copy of which is hereto annexed, was made and entered herein.

That such order was and is erroneous in that,

First. That said order and the findings of said referee contained therein are against the weight of the evidence given at the hearing of said petition:

Second. That said referee erred in holding that the notes, executed and delivered to said claimant by said bankrupt, were in payment for said horses.

Third. That said Court erred in holding that said claimant did not reserve title to said horses, and said referee erred in holding that the giving of said notes were conclusive evidence that title to said personal property was not retained by the petitioner but that the giving of notes [19] by bankrupt was conclusive as to the payment for said horses;

Fourth. That the undisputed evidence given at said hearing discloses that your petitioner reserved title to said horses, that the contract relative to the sale of said horses was a verbal one, by the terms of which it was agreed that title to said property should remain in the vendor until the purchase price, which was evidenced by certain notes, was paid and that

said referee, under the undisputed evidence given at said hearing, erred in not so finding.

WHEREFORE, your petitioner, feeling aggrieved because of such order prays that the same may be reviewed, as provided in the bankruptcy law of 1898 and General Order XXVII.

Dated at San Diego, California, in said District, this day of October, 1915.

ADOLPH LEVI,  
Petitioner.

State of California,  
County of San Diego,  
City of San Diego,—ss.

I, Adolph Levi, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained are true, according to the best of my knowledge, information, and belief.

ADOLPH LEVI.

Subscribed and sworn to before me this 16th day of October, 1915.

[Seal]

JAMES E. O'KEEFE,  
Notary Public. [20]

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*In the District Court of the United States for the  
Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

**Order Denying and Dismissing Petition in Reclamation of Adolph Levi.**

At a court of bankruptcy held at San Diego, Cal., in said District on the 23d day of September, A. D. 1915.

Before the Honorable, EDWARD T. LANNON, Referee in Bankruptcy, in said District.

Adolph Levi, having duly heretofore filed his petition in reclamation, praying leave to reclaim certain property, more particularly mentioned and described in said petition, upon the ground that said bankrupt, above named, purchased said property upon a conditional sale, and that the title to said property was to remain in said petitioner, until certain promissory notes given therefor, and at the time of said purchase, were fully paid, and also praying leave to reclaim four certain horses, mentioned and described in said petition, which said horses were rented to the said bankrupt.

And the above cause coming on for hearing before me on said day and evidence having been duly offered, J. E. O'Keefe, appearing as attorney for the petitioner, and A. L. Wissburg, appearing as attorney for the trustee, herein, and said evidence and the law having been duly considered. [21]

IT IS HEREBY ORDERED that the Petition in Reclamation of the said Adolph Levi, as to the property claimed to have been sold on conditional sale, be, and the same is hereby, dismissed and denied.

IT IS FURTHER ORDERED that the four horses mentioned and described in said petition, and



claimed by said petitioner to have been rented to said bankrupt, is the property of the Petitioner and the trustee in bankruptcy is hereby ordered to abandon the possession of said four horses.

Dated San Diego, Cal., Sept. 27, 1915.

(Signed) EDWARD T. LANNON,  
Referee in Bankruptcy. [22]

[Endorsed]: No. 6089. Dept. No. I. In the Superior Court of the State of California, County of San Diego. In the Matter of the Farmers Dairy Association (a Corp.), Bankrupt. Petition for Review. Filed Oct. 16, 1915. Edward T. Lannon. James E. O'Keefe, Attorney for Petitioner. [23]

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*In the District Court of the United States for the  
Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

**Referee's Certificate on Review.**

To the Honorable District Judge:

I, Edward T. Lannon, the Referee in Bankruptcy in charge of this proceeding, do hereby certify.

That in the course of such proceeding, an order, a copy of which is annexed to the petition hereinafter referred to, was made, and entered on the 27th day of September, A. D. 1915.

That on the 16th day of October, A. D. 1915, Adolph Levi, the petitioner in such proceedings, feeling ag-

grieved, thereat, filed a petition for review, which was granted.

That a summary of the evidence on which such order was based, is as follows:

The petition came on for hearing before said referee on the 23d day of September, A. D. 1915, J. E. O'Keefe, Esq., appearing as attorney for said petitioner, and A. L. Wissburg Esq., appearing as attorney for the trustee in said proceedings.

Mr. N. J. Peavy, called as a witness for petitioner, testified on direct examination, in substance, as follows:

That he, during the times mentioned in said petition was the [24] president of said Farmers Dairy Association, the bankrupt, and at certain times during said period, was Manager of said Farmers Dairy Association. That he had certain dealings with Mr. Levi, the petitioner, relative to the purchase of certain horses. That on or about the ——day of ——, 1915, witness had a conversation with petitioner at a ranch north of San Diego, relative to the purchase of said horses for said Farmers Dairy Association. That at this time the horses were inspected, Mr. L. A. Serrano, another officer of the corporation, was present at this time. Witness and petitioner negotiated for the sale of two of said horses at this time, which said horses were to be sold to the Farmers Dairy Association. Mr. Levi at this time states, and witness understood, that title to said horses were to remain in seller until the purchase price therefore had been paid. That this contract and understand-

ing was verbal. That promissory notes of the corporation representing the purchase price for said two horses were given by the corporation as was also understood between witness and petitioner, said notes being hereto attached.

That shortly thereafter, and on or about the — day of —, 1914, other and similar transactions were had between witness and petitioner, and said corporation secured two additional horses from petitioner, giving the corporation notes therefor.

That shortly thereafter, and on or about the — day of —, 1914, other and similar transactions were had between witness and petitioner, and said corporation secured five additional horses from petitioner, giving notes therefor. That at the time of this last transaction, Mr. H. Stephenson, was the secretary of said corporation.

That witness, petitioner and Mr. Serrano on one occasion went to the livery-stable of a Mr. Williams, in San Diego for the purpose of getting information concerning one of the horses in question, which had been traded by Mr. Powers, the then manager of said corporation; that petitioner at that [25] time told Mr. Williams that the horse in question belonged to him by virtue of the conditions of said sale.

That during the first part of July, 1915, witness entered into a certain contract with Mr. Schnell for the sale of the horses in question; that at this time, Mr. Levi, the petitioner, told Mr. Schnell of said contract of sale *by which* between witness and petitioner.

On cross-examination, witness states that the

*understand* and contract between himself and petitioner was verbal. That the matter of said purchases was brought to the attention of the board of directors of said corporation and they took action on same; that said corporation asserted indicia of ownership over said horses and used said horses in the business of said corporation. That said horses were carried on the books of the corporation as the property of said corporation, and monthly statements were gotten out by the corporation to the creditors, in which statements, said horses were carried as an asset of the corporation. That on each of the occasions, notes of the corporation, representing the purchase price of said horses were given, all which notes were introduced in evidence; that the notes representing the two first purchases of horses contain the words: "Balance in full for one bay mare and one bay horse, known as the Errica Mare and Horse" and "Balance in full due on one bay horse and one bay mare." That Mr. H. Stephenson was Secretary of said corporation at the time of the purchase of the last five horses and witness did not state that said horses were purchased on conditional sale, and did not state that title to said horses were to remain in seller until paid, nor was anything said to Mr. Stephenson concerning [26] any conditions under which the horses were purchased.

Mr. L. A. Serrano testified on direct examination that he was a member of the board of directors of said corporation, and at different times held other offices in said corporation. That he was present on one oc-

occasion with Mr. Peavey had dealings with petitioner concerning the purchase of said horses, and petitioner stated that title to said horses were to remain in him until the purchase price was paid.

On cross-examination, witness states that this transaction and contract relating to the purchase of the horses was verbal. That the matter was brought to the attention of the board of directors of the corporation and they took action on it. That said corporation gave notes for the purchase price of said horses.

Mr. Geo. M. Kimball was called as a witness and testified on direct examination that he was a member of the board of directors of said corporation and for a short period of time was manager and secretary. That he was present on one occasion when Mr. Peavey had dealings with petitioner concerning the purchase of said horses and petitioner stated that title to said horses should remain in him until they were fully paid for.

On cross-examination witness stated that the contract was verbal; that the matter was brought to the attention of the board of directors of the corporation and they took action on it. That the corporation gave notes for the horses, assumed ownership of the horses and the horses were placed as an asset [27] of the corporation on the books of the corporation and also in the monthly statements sent to creditors by the corporation.

Mr. Adolph Levi, petitioner, testifying in his own behalf, states; that on each and all occasions in his dealings with Mr. Peavey relative to the sale of the

horses he stated that the title to the horses in question should remain in him until the purchase price was paid. That on 1915, he loaned the Farmers Dairy Association the sum of \$1.000, for which the company gave its note, and also placed with him other notes of the corporation as collateral security for said loan. That certain officers and stockholders of the corporation endorsed said note. That he consented to the sale of said horses to Mr. Schnell, but it was understood with Mr. Peavey at the time that he should be paid the balance due on said horses. That on the —— day of ——, 1915, he called on Mr. Williams, the livery man of San Diego, for the purpose of locating a certain horse *with* the said Association had traded with Mr. Williams, and informed said Williams of the condition of the sale of said horses.

On cross-examination, Mr. Levi stated that the contract for sale of said horses was made with Mr. Peavey on behalf of the Farmers Dairy Association, and was verbal. That the Corporation took the horses and kept them in their charge; that he knew the corporation was carrying the horses on their books as an asset of the corporation; that promissory notes were given him by the corporation for the purchase price of said horses, and he accepted said notes; that title to said horses was not reserved in the notes, but that the notes were ordinary notes, due several months after date. [28]

Mr. Edgar Levi, son of petitioner, testified that he was present on one or more occasions when petitioner and Mr. Peavey had conversations relative to the pur-

chase of said horses, and his father stated that title to said horses were to remain in him until paid.

On cross-examination witness states that he prepared the notes given for the purchase price of said horses at the request of his father and said notes did not reserve the title to said horses in his father. That on the notes given for the purchase of the first four horses, he wrote therein the words: "Balance in full for one bay mare and one bay horse, known as the Enricca Mare and Horse" and "Balance in full on one bay horse and one bay mare."

Whereupon petitioner rested.

Mr. H. Stephenson was called as a witness and testified on behalf of the bankrupt estate, states that he was Secretary of the Farmers Dairy Association at the time of the purchase of the five last-named horses from Mr. Levi. That at said time, Mr. Peavey came to his office and stated to witness that he had purchased said horses from Mr. Levi and the company would have to give notes therefor, and Mr. Peavey requested witness to sign said notes as secretary. That Mr. Peavey did not state any condition attached to the sale of said horses, and witness considered that the notes were given in payment of the purchase price. That witness did not know, nor did Mr. Peavey tell him that the title to said horses was reserved in seller. That witness was also a member of the board of directors of said corporation and the board of directors took action on said matter.

The minutes of the board of directors of said corporation [29] was offered in evidence by the trustee, minutes dated July 20, 1915, and also the minutes

dated August 16, 1915; an excerpt of the minutes of July 20, relative to the purchase of said horses is as follows:

“It was moved by L. A. Seranno, seconded by W. E. Stewart and carried, that the matter of the purchase of two horses be purchased at \$125 and \$135 as follows:  $\frac{1}{2}$  due in six months,  $\frac{1}{4}$  in nine months and the balance in one year.”

An excerpt of the minutes of the board of directors of Farmers Dairy Association, a Corporation, of August 16, 1915, relative to the purchase of said horses is as follows: “It was moved by L. A. Seranno and seconded by W. E. Stewart that we purchase of Adolph Levi the two horses on the terms that the others were purchased.”

The books of the corporation were also offered in evidence by the trustee, showing that said horses were kept on the books as an asset of the corporation.

The monthly statements gotten out by the corporation to the creditors were also offered in evidence, showing that said horses were carried there as an asset of the corporation.

The following voucher checks of the corporation were also offered in evidence, showing payment of notes by the corporation for the horses in question:

Voucher No.	Date	Name	Amt.
668	4/14/15	A. Levi	\$35.10
449	1/22/15	”	188.63
385	12/11/14	”	54.35
230	10/ 7/14	” (int)	5.30
611	3/15/15	” ”	2.50
669	4/18/15	”	66.50



That the question presented on this review is:

First. Did the petitioner, A. Levi, retain title to the horses in question by virtue of the alleged verbal contract?

Second. Did the bankrupt corporation purchase said [30] horses outright, or on conditional sale?

Third. Is petitioner, A. Levi, estopped from asserting title to said horses after accepting promissory notes of bankrupt in payment for said horses and receiving payment on certain other promissory notes given at the same time for said purchase?

Fourth. Are the promissory notes conclusively presumed to be given in payment of the debt?

Fifth. Is trustee's title paramount to title of vendor?

I hand up herewith for the information of the Judge the following papers:

1. Petition for Reclamation.
2. Answer of the Trustee.
3. Petition for review to which is attached a copy of the Referee's Order.

Dated Nov. 10th, 1915.

Respectfully submitted,

EDWARD T. LANNON,

Referee in Bankruptcy.

[Endorsed]: 2155—Bankruptcy. In the District Court of the United States for the Southern District of California Southern Division. In the Matter of The Farmers Dairy Asso., a Corporation, Bankrupt. Referee's Certificate on Review. Filed Nov. 11th, 1915. Edward T. Lannon, Referee. Filed Nov. 13,

1915, at 45 min. past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. [31]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

**Opinion.**

Adolph Levi filed his petition "in reclamation" for an order for the return to him of certain horses held by the trustee and which he alleged had been sold to the bankrupt on conditional sale, title to remain in him till full purchase price was paid. The referee, after hearing, ordered that said petition be "dismissed and denied." A review by the judge was sought.

The referee's certificate on review contained merely a summary of the evidence on which his order was based, and showed that one Peavey, called in behalf of petitioner, testified that he, during the times mentioned in said petition, was the President of said Farmers Dairy Association, the bankrupt, and "at certain times during said period was manager of said Farmers Dairy Association"; that he had certain dealings with the petitioner relative to the purchase of certain horses; that "on or about the — day of —, 1915," witness had a conversation with petitioner relative to the purchase of said horses, for the

Association, another official of the Association being present. Witness and petitioner negotiated for the sale of said horses and witness understood that title to said horses was to remain in the seller until the purchase price therefor had been paid. The contract and the understanding [32] were verbal: The promissory notes of corporation representing the purchase price were given by the corporation as was understood by witness and petitioner should be done. Other transactions involving other horses and, under similar circumstances were also had between petitioner and the witness.

The witness also testified "that the matter of said purchase was brought to the attention of the board of directors of said corporation and they took action on same; that said corporation asserted indicia of ownership over said horses and used said horses in the business of said corporation. That said horses were carried on the books of corporation as the property of said corporation, and monthly statements were gotten out by the corporation to the creditors, in which statements, said horses were carried as an asset of the corporation."

Witness further testified that one Stephenson was the secretary of the corporation at the time of the purchase of the last five horses, and witness did not state the horses were purchased on conditional sale, and did not state that title to said horses was to remain in seller until paid, nor was anything said to Mr. Stephenson concerning any conditions under which the horses were purchased. Other evidence of similar import, given by other persons, was also set

out in summary way in the certificate of the referee.

The secretary of the corporation was called and testified that he was informed by Mr. Peavey, the president, that he had purchased certain horses from the petitioner and that the company would have to give its notes therefor; that no statement was made as to any condition attached to the sale of the horses, and that witness considered that the notes were given in payment of the purchase price. "That witness [33] did not know, nor did Mr. Peavey tell him that the title to said horses was reserved in the seller; that witness was also a member of the board of directors of said corporation, and the board of directors took action on said matter." The only action shown by the certificate to have been taken by the board of directors was an excerpt copied from the minutes of the corporation, which excerpt in substance set forth that it was regularly moved and seconded that the horses in question "be purchased" at a certain price and on certain terms with respect to the time of payment specified.

It was also shown by the books of the corporation that the horses were entered on the books as an asset and that statements were issued showing this fact.

The promissory notes given by the corporation were in ordinary form and contained no statement or intention of any "conditional sale."

JAMES E. O'KEEFE, Attorney for Petitioner.

A. L. WISSBURG, Attorney for Trustee.

BLEDSOE, District Judge (after stating the facts as above).

In this case, from the certificate sent up by the

referee, it is impossible to determine the reasons which actuated him in arriving at the conclusion as to which a review is sought, and which resulted in the conclusion complained of. The order entered by the referee is merely to the effect that the petition of reclamation filed by the petitioner Levi is dismissed and denied. The Court is not advised therefore of the findings of fact and conclusions of law, if any, arrived at by the referee.

In a proceeding of this character respecting ownership and title to property, the law of the State wherein such property is situate controls. In California, it may be considered as [34] established that in a contract of sale such as was relied upon by petitioner herein, the title to chattels sold may be retained by the seller pending full payment of the purchase price, or the performance of any other conditions named by him. This reservation of title by the seller is good as against creditors and consequently as against the trustee in bankruptcy of the buyer. *Perkins v. Mettler*, 126 Cal. 100; *Van Allen v. Francis*, 123 Cal. 474. The contract may be verbal unless some local statute requires otherwise; *Blackwell v. Walker*, 5 Fed. 419. No such statute of California has been called to my attention. The assumption of a positive obligation by the buyer to pay the purchase price does not in itself serve to change a sale which otherwise would be conditional into an absolute one. Neither is it to be assumed by the Court, in the light of present-day business transactions that the giving of a promissory note is to be considered as payment and complete satisfaction in itself of the

obligation therein represented and thereby ordinarily sought to be evidenced. In other words, in the absence of any contrary proof, the Court, in accordance with usual business procedure, must assume that a promissory note is given as evidence of a debt owing, rather than as payment and satisfaction thereof.

Under the evidence in this case, therefore, if it were the fact that a contract was shown to exist as between the petitioner and the bankrupt corporation providing for the conditional sale of the horses mentioned in the petition and title was to vest only upon full payment therefor, it would follow that the petition should have been granted, and that the order made by the referee should be reversed in its entirety. There is a matter involved, however, which arises upon the record and which has impelled the Court to give to [35] the proceeding some consideration other than that suggested by arguments of counsel.

All the authorities seem to hold that in a proceeding of this sort the burden of proof rests upon him who claims the sale to have been conditional rather than absolute. In other words, upon the transfer of personal property and the receipt of promissory notes in payment therefor, the presumption ordinarily would be that an absolute sale was intended and had been effectuated.

The bankrupt in this case is a corporation and the petitioner must have shown a contract as between himself and the corporation, if he would sustain his claimed reservation of title. The record, which con-

sists merely of a summary of the evidence taken before the referee, obviously is very meager, but it does not, in my judgment, meet the burden imposed upon the petitioner. It fails to show that a contract was entered into between petitioner and the corporation. It does show that the petitioner had dealings with a Mr. Peavey, who was at said times the "president of the association," and was "at certain other times," but not necessarily at any times when sales of horses were being consummated, the "manager of the corporation," and that, in the sales which were made, verbal understandings were had that title to the respective horses was to be reserved by the petitioner until full payment of the purchase price. The mere fact that this arrangement was had with the president does not, in my judgment, under the authorities, serve to bind the corporation. *Fontana v. Pacific Can Co.*, 129 Cal. 51. There is no suggestion anywhere in the record that the corporation itself was at any time, through its board of directors, or otherwise, apprised of the fact that a reservation of the title to the horses was a part of its contract. On the contrary, [36] as shown by the record, the contract of the corporation, as evidenced by the resolution of its board of directors, was that of an absolute sale.

There is no showing as to the number of directors of the corporation or as to the number who were informed even privately of the understanding had between the petitioner and the president, and no showing, therefore, that the board of directors or even a majority of the board, were advised of the fact of the

reservation of title, or at all consented to or acquiesced in the verbal agreement purporting to retain title to the horses in the petitioner until the full purchase price has been paid. In this connection it must be remembered that the referee has denied the petition and because of this fact all presumptions with respect to the want or sufficiency of evidence are in favor of the validity of his order, and the Court must not assume that evidence with respect to any matter was given which would be inconsistent with the conclusion reached by the referee, unless such evidence is succinctly set forth in the record brought to this Court.

It thus appears, as I view the case, that the petitioner attempted by verbal understanding had with the president of the corporation, who, in so far as the record shows, was unauthorized to bind the corporation, to retain title to his horses until the entire purchase price had been paid. In this he was unsuccessful, in so far as the actual negotiation of a contract was concerned, in that the president was not authorized, apparently, to bind the corporation in this respect. The purchase price not having been paid, it would not be proper, however, to hold, as did the referee, that the petitioner now be deprived of the title to his horses. He consented to no such arrangement, entered into no such contract, and the Court should not by its judgment decree that he did. [37].

It must be that as to the matter of the retention of the title to the animals there was no meeting of the minds sufficient to constitute a conditional sale contract and the rights of the parties will have to be de-



terminated on some other basis.

Though this feature of the case has not been argued by, or presented in the briefs of counsel, it seems to me that under the circumstances the only fair and equitable thing to do is to hold that the petitioner is still the owner of the horses and that the bankrupt corporation is entitled to a return of so much of the purchase price as has been paid thereon, less such a sum, not to exceed in any event, the amount of the purchase price thus far paid, as will suffice to reimburse the petitioner for the reasonable value of the use of the horses during the time they were in the possession of the bankrupt and up to the date of the adjudication herein.

The order of the referee is therefore reversed and the matter remanded for further hearing by him. Upon such further hearing he will take evidence and determine the reasonable value of the use of the horses during the period mentioned and will make an order directing the trustee to return the horses to the petitioner upon the repayment by the petitioner of all sums of money received by him as part of the purchase price of the said horses in excess of the amount which he may be entitled to retain as the reasonable value of such use. Petitioner will also be directed to deliver up for cancellation the promissory notes received by him as evidence of the purchase price to be paid.

[Endorsed]: No. 2155. U. S. District Court, Southern District of California. In the Matter of Farmers Dairy Association, a Corporation, Bank-

rupt. Opinion. Filed May 29, 1916. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. [38]

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*United States District Court for the Southern District of California.*

IN BANKRUPTCY.—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

**Petition for Appeal to the Circuit Court of Appeals.**

To the Honorable Judges of the United States District Court for the Southern District of California.

Your petitioner, A. M. Shook, Esq., Trustee of the above-entitled bankrupt estate, conceiving himself aggrieved by the certain order and judgment entered on the 29th day of May, A. D. 1916, in the above-entitled proceedings, reversing the order and judgment of Edward T. Lannon, Esq., Referee in Bankruptcy for the Southern District of California, Southern Division, at San Diego, California, does hereby petition for an appeal from the said order and judgment entered the 29th day of May, A. D. 1916, to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his appeal may be allowed and that a citation may be granted, directed to Adolph Levi, Esq., claimant, to do and receive that which may appertain to justice to be done in the premises, and that a transcript of the record and evidence in said proceedings duly authenticated, may

be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

A. M. SHOOK,  
Trustee in Bankruptcy of the Estate of Farmers  
Dairy Association, a Corporation.

By A. L. WISSBURG,  
His Attorney.

The foregoing appeal is hereby allowed, this 1st day of July, A. D. 1916.

BLEDSOE,  
United States District Judge.

[39]

[Endorsed]: No. 2155—Bkey. United States District Court for the Southern District of California. In the Matter of Farmers Dairy Association, a Corporation, Bankrupt. In Bankruptcy. No. 2155. Petition for Appeal to the Circuit Court of Appeals, and Order Allowing. Filed Jul. 1, 1916, Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [40]

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*In the District Court of the United States for the Southern District of California, Southern Division.*

IN BANKRUPTCY.—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

**Assignment of Errors.**

Now comes A. M. Shook, Esq., Trustee in Bankruptcy of the above-entitled bankrupt estate, appel-

lant, and files this, his assignment of errors, complaining as follows:

1. That the said order, decision and opinion of the District Court reversing and re-referring the matters in dispute to Edward T. Lannon, Esq., the referee in bankruptcy, for further hearing, was against the weight of the evidence.

2. That the Court in making said order, decision and opinion held that negotiable promissory notes given in payment of the purchase price for the horses in question, in the absence of any contrary proof must be assumed to be given as an evidence of indebtedness, rather than as payment and satisfaction thereof, whereas the evidence is conclusive, there being none to the contrary, that the notes so given were given in payment and satisfaction of the debt, and the notes themselves bear notations to this effect.

3. That the Court in making said order, decision and opinion disregarding the contentions of both the trustee in bankruptcy and the claimant in holding that no contract of any kind had been entered into, whereas all parties to the action admitted that there was a contract entered into between [41] claimant and the bankrupt, claimant contended the contract of sale was a conditional one, and the trustee contending the said contract of sale was absolute, and that under said contract the trustee was entitled to the possession of the horses in question as the property of the bankrupt corporation.

4. That the Court in making said order, decision and opinion disregarded the fact that the claimant had positive knowledge that bankrupt was regard-

ing said contract of sale as absolute; claimant acquiring said knowledge from statements of the business of bankrupt, and also from the books of bankrupt, said knowledge was also being communicated to creditors of bankrupt who extended credit on the strength of the statements of the bankrupt's business, and claimant failed to in any way assert his right or title to the horses in question until bankruptcy proceedings proper were commenced, this being all the evidence and there being none to the contrary, whereas, such being the case, claimant is, by his conduct, now estopped from asserting any title or claim to the property in dispute.

A. M. SHOOK,

Trustee in Bankruptcy of the Estate of Farmers  
Dairy Association, a Corporation, Bankrupt.

By A. L. WISSBURG,

His Attorney.

[Endorsed]: 2155—Bkey. In the District Court of the United States in and for the Southern District of California, Southern Division. In Bankruptcy. No. 2155. In the Matter of Farmers Dairy Association, a Corporation. Bankrupt. Assignment of Errors. Filed Jul. 1, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [42]

*United States Circuit Court of Appeals, Ninth  
Circuit.*

IN BANKRUPTCY.—No. 2155.

In the Matter of FARMERS DAIRY ASSOCIA-  
TION, a Corporation, Bankrupt.

**Stipulation as to Record on Appeal.**

WHEREAS, in the above-entitled proceeding the bankrupt, Farmers Dairy Association, a corporation, did on the 30th day of June, A. D. 1916, duly file in the District Court of the United States for the Southern District of California a petition for appeal and assignment of errors, and citation, which said appeal was allowed by order of the District Court upon said day, and the time to certify the record having been duly extended.

NOW, THEREFORE, it is hereby stipulated that the record to be certified to this court by the clerk of the United States District Court for the Southern District of California, on said appeal shall consist of the following:

1. Petition for Reclamation.
2. Answer of A. M. Shook, Esq., Trustee, to Petition of A. Levi.
3. Petition for Review to which is attached a copy of Referee's Order.
4. Referee's Certificate on Review.
5. Opinion of His Honor, B. F. Bledsoe, United States District Judge for the Southern District of Calif.

6. Petition for Appeal to the Circuit Court of Appeals.
7. Assignment of Errors.
8. Citation on Appeal.

Dated August 26th, 1916.

A. L. WISSBURG,  
Attorney for Trustee, Appellant.  
JAS. E. O'KEEFE,  
Attorney for Creditor, Respondent.

[43]

[Endorsed]: 2155—Bkey. United States District Court, Southern District California, Southern Division. In the Matter of Farmers Dairy Association, a Corporation. Bankrupt. Stipulation as to record on Appeal. Filed Sep. 2, 1916, at—min. past 9 o'clock A. M. Wm. M. VanDyke, Clerk. Leslie S. Colyer, Deputy. [44]

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*In the District Court of the United States of America,  
in and for the Southern District of California,  
Southern Division.*

IN BANKRUPTCY.—No. 2155.

In the Matter of the FARMERS DAIRY ASSOCIATION, a Corporation, Bankrupt.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing forty-four typewritten pages, num-

bered from 1 to 44, inclusive, and comprised in one volume, to be a full, true and correct copy of the Petition in Reclamation, the Answer of A. M. Shook, Trustee, to Petition of Adolph Levi, the Petition for Review and Order denying and dismissing Petition in Reclamation of Adolph Levi, the Referee's Certificate on Review, the Opinion, the Petition for Appeal to the Circuit Court of Appeals, and Order Allowing, the Assignment of Errors, the Stipulation as to Record on Appeal, in the above and therein entitled matter, and that the same together constitute the record in said matter upon the Appeal of A. M. Shook, Trustee of the Farmers Dairy Association, a Corporation, Bankrupt, from the Order and Judgment entered on the 29th day of May, A. D. 1916, in said matter, as specified in the said Stipulation as to Record on Appeal, filed in my office on behalf of the appellant by its attorney of record. [45]

I do further certify that the cost of the foregoing record is \$20.00, the amount whereof has been paid me on behalf of said A. M. Shook, Trustee of the Farmers Dairy Association, a Corporation, Bankrupt.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 19th day of October, in the year of our Lord, one thousand nine hundred and sixteen and of



our Independence the one hundred and forty-first.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of  
America, in and for the Southern District of  
California. [46]

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[Endorsed]: No. 2868. United States Circuit  
Court of Appeals for the Ninth Circuit. A. M.  
Shook, Trustee of the Farmers Dairy Association, a  
Corporation, Bankrupt, Appellant, vs. A. Levi, Ap-  
pellee. Transcript of Record. Upon Appeal from  
the United States District Court for the Southern  
District of California, Southern Division.

Filed October 21, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

(2115—BKCY.)

A. M. SHOOK, Trustee in Bankruptcy of the Estate  
of FARMERS DAIRY ASSOCIATION, a  
Bankrupt,

Appellant,

vs.

A. LEVI,

Appellee.

**Order Extending Time to and Including October 30,  
1916, to File Record and Docket Cause.**

Good cause appearing therefor, it is hereby ordered that the time of appellant within which to file record and docket cause in the above-entitled court be and the same hereby is extended to and including the 30 day of October, 1916.

Dated Sept. 25, 1916.

BLEDSON,  
Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals, for the Ninth Circuit. A. M. Shook, Trustee in Bankruptcy of Farmers Dairy Association, a Bankrupt, Appellant, vs. A. Levi, Appellee. Order Extending Time to File Record and Docket Cause.

No. 2868. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to October 30, 1916, to File Record thereof and to Docket Case. Filed Oct. 2, 1916. F. D. Monckton, Clerk. Refiled October 21, 1916. F. D. Monckton, Clerk.